

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART: 46

-----X
MARISSA HOECHSTETTER, JANE DOE #8, JANE DOE #9,
JANE DOE #10, JANE DOE #11, JANE DOE #12, JANE
DOE #13, JANE DOE #14, JANE DOE #15, JANE DOE
#16, JANE DOE #17, JANE DOE #18, JANE DOE #19,
JANE DOE #21, JANE DOE #22, JANE DOE #23, and
JANE DOE #26,

PLAINTIFFS,

-against-

INDEX#
161335/2018
MOTION

COLUMBIA UNIVERSITY; THE NEW YORK AND
PRESBYTERIAN HOSPITAL; COLUMBIA PRESBYTERIAN
MEDICAL CENTER; COLUMBIA UNIVERSITY MEDICAL
CENTER; COLUMBIA-PRESBYTERIAN MEDICAL CENTER,
EAST SIDE ASSOCIATES; EAST SIDE ASSOCIATES;
ROBERT HADDEN; THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY OF NEW YORK; COLUMBIA
UNIVERSITY COLLEGE OF PHYSICIANS AND SURGEONS;
PRESBYTERIAN HOSPITAL PHYSICIAN SERVICES
ORGANIZATION, INC.; COLUMBIA-CORNELL CARE, LLC;
COLUMBIA CORNELL NETWORK PHYSICIANS, INC.;
SLOANE HOSPITAL FOR WOMEN,

DEFENDANTS.

-----X
71 Thomas Street
New York, New York
June 20, 2019

B E F O R E :

HONORABLE LUCY BILLINGS,
JUSTICE OF THE SUPREME COURT

CHARISSE KITT, CRI, CSR, RMR, FCRR

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART: 46

-----X
JANE DOE #3, JANE DOE #4, JANE DOE #5, and JANE
DOE #6,

PLAINTIFFS,

-against-

INDEX#
152438/2017
MOTION

THE NEW YORK PRESBYTERIAN HOSPITAL; COLUMBIA
PRESBYTERIAN MEDICAL CENTER; COLUMBIA UNIVERSITY
MEDICAL CENTER; COLUMBIA-PRESBYTERIAN MEDICAL
CENTER, EAST SIDE ASSOCIATES; EAST SIDE
ASSOCIATES; ROBERT HADDEN; THE TRUSTEES OF
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK;
COLUMBIA UNIVERSITY COLLEGE OF PHYSICIANS AND
SURGEONS; PRESBYTERIAN HOSPITAL PHYSICIAN
SERVICES ORGANIZATION, INC.; COLUMBIA-CORNELL
CARE, LLC; COLUMBIA CORNELL NETWORK PHYSICIANS,
INC.; SLOANE HOSPITAL FOR WOMEN,

DEFENDANTS.

-----X
71 Thomas Street
New York, New York
June 20, 2019

B E F O R E :

HONORABLE LUCY BILLINGS,
JUSTICE OF THE SUPREME COURT

A P P E A R A N C E S :

THE LAW OFFICE OF ANTHONY T. DIPIETRO
Attorney for the Plaintiffs
233 Broadway

BY: ANTHONY T. DIPIETRO, ESQ.
NORMAN A. OLCH, ESQ.

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

CHARISSE KITT, CRI, CSR, RMR, FCRR

1 A P P E A R A N C E S: (CONT'D)

2 HEIDELL, PITTONI, MURPHY & BACH, LLP
3 Attorneys for the New York
4 Presbyterian Hospital
5 99 Park Avenue
6 New York, New York 10016
7 BY: DENISE A. HOLZKA, ESQ.

8 VASLAS LEPOWSKY HAUSS & DANKE LLP
9 Attorneys for Dr. Hadden
10 201 Edward Curry Avenue
11 Staten Island, New York 10314
12 BY: KENNETH M. DALTON, ESQ.

13 AARONSON RAPPAPORT FEINSTEIN & DEUTSCH, LLP
14 Attorneys for the Corporate Defendants
15 600 Third Avenue
16 New York, New York 10016
17 BY: JAY A. RAPPAPORT, ESQ.
18 DEIRDRE TRACEY, ESQ.

19
20
21
22
23
24
25
CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 THE COURT: Is this plaintiffs' motion to
2 extend the time to serve defendants. There's
3 tremendous focus on the filing of an amended
4 complaint. To me, there's two fairly critical
5 issues. One is the service, not the filing, the
6 service of some complaint, whether it be the original
7 one that was filed in December of 2018, or some
8 amended complaint after that, on all of the
9 defendants. And then the second is the potential
10 merit of the action primarily as to whether it was
11 within the statute of limitations.

12 So some complaint needed to be served on all
13 of the defendants within 120 days of December 4,
14 2018, which I believe you all agree is April 3, 2019;
15 that's when the 120 days ran.

16 MR. DIPIETRO: I think it was December 14th.

17 THE COURT: If not, we'll figure it out.

18 MS. HOLZKA: Yes, your Honor, the April 3rd.

19 THE COURT: Okay.

20 MS. HOLZKA: And we would also agree, your
21 Honor, that that was served on our clients and based
22 upon that we moved it to federal court where it's
23 pending.

24 THE COURT: Okay. So you agree that all of
25 your clients were served within the -- before

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 April 3rd?

2 MS. HOLZKA: With the complaint that
3 contained the federal causes of action, correct.

4 THE COURT: All right. Only that one?

5 MS. HOLZKA: Correct.

6 THE COURT: Has any other complaint ever been
7 served?

8 MS. HOLZKA: In that action, no. In that
9 2018 action, no.

10 THE COURT: You all refer to -- I think to
11 the four different versions of the complaint.
12 Correct? There is the original complaint that was
13 filed --

14 MS. HOLZKA: In December.

15 THE COURT: -- in December of 2018, then
16 there was an amended complaint which, we'll call it
17 the first amended complaint, what you call Complaint
18 B, was served on at least the hospital and the
19 university defendants.

20 MS. HOLZKA: Correct. That was --

21 THE COURT: Was that also served on
22 Dr. Hadden.

23 MR. DALTON: Your Honor, I can say this,
24 Dr. Hadden was served with a complaint which does not
25 contain the federal actions, the federal causes of

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 action, but Dr. Hadden was not served with the
2 complaint that has the federal action that was the
3 one in Complaint A that was filed in December, on
4 December 4. So I have a different version of a
5 complaint that was served on Dr. Hadden.

6 THE COURT: So were you served with Complaint
7 C or D?

8 MR. DALTON: C or D after April 3rd, yes.

9 THE COURT: Oh, after April 3rd?

10 MR. DALTON: Yes, your Honor.

11 THE COURT: When?

12 MR. DALTON: If I remember, Judge, I think it
13 was the 14th, but it could be later than that, Judge,
14 I just -- I don't have that in front of me now and I
15 don't recall, but it was definitely after that date.

16 THE COURT: So the hospital/university
17 defendants were served only with that one version of
18 the complaint to date?

19 MS. HOLZKA: Correct.

20 THE COURT: So plaintiffs are actually
21 seeking an extension of time not for two days, but
22 for now a few months to serve defendants other than
23 Hadden; is that correct?

24 MR. DIPIETRO: No, your Honor. Actually, the
25 university and corporate defendants were served with

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 this as an exhibit to the motion asking for more time
2 to serve.

3 THE COURT: That's not -- that's not service
4 as required by the CPLR.

5 MR. DIPIETRO: I understood --

6 THE COURT: You served them -- I'm not sure
7 what kind of business entities each of these
8 defendants is, but the hospital, the medical center,
9 the various medical centers, East Side Associates and
10 the university, the College of Physicians and
11 Surgeons, the Physician Services Organization Inc.,
12 that's a corporation, obviously. Columbia-Cornell
13 Care, LLC is a limited liability company.

14 Were they all served in the manner required
15 by CPLR 311, 311-A?

16 MR. DIPIETRO: They all were individually
17 served, not on defense counsel, but they were all
18 individually served with the motion and I understood
19 the case law to mean that when you make the motion
20 you can -- you have to attach the pleadings to that
21 motion.

22 THE COURT: You're not answering my question.
23 They were not served then by the secretary of state
24 or by service, as otherwise required by CPLR 311 or
25 311-A, depending upon the type of business

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 organization?

2 MR. DIPIETRO: None of them in any of the
3 actions dating back six years were served by the
4 secretary of state, they were all served personally
5 at their corporate offices.

6 THE COURT: On an officer that's specified in
7 CPLR 311 or 311-A?

8 MR. DIPIETRO: That's my understanding, yeah,
9 they designate a window for proper service of -- the
10 university has a window for service of process.

11 THE COURT: Okay. And you're contesting
12 that?

13 MS. HOLZKA: It wasn't served. We're not
14 contesting that it was served on April 3rd with that
15 original amended complaint, Complaint B, as you refer
16 to.

17 THE COURT: Right. You're saying you were
18 never served at all with any other version of the
19 complaint?

20 MS. HOLZKA: Our clients were not served, no.

21 THE COURT: Okay. And he's saying they were.

22 MS. HOLZKA: They weren't. They were with
23 the motion. He keeps saying with the motion.

24 THE COURT: Okay. Do you know whether it was
25 version C or version D that Dr. Hadden was served

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 with, or can plaintiffs clarify that?

2 MR. DIPIETRO: Yes, your Honor, that was the
3 actual filed version which would be D.

4 THE COURT: D?

5 MR. DIPIETRO: Yes.

6 THE COURT: All right. But it was after
7 April 3rd?

8 MR. DIPIETRO: Well, yes, because we
9 didn't -- it wasn't accepted until April 4th. The
10 clerk -- by the clerk, I'm saying. The clerk didn't
11 approve it.

12 THE COURT: Okay. There was nothing that
13 prevented you from serving that original complaint
14 from December of 2018 in a 120-day period, worry
15 about amending the complaint later. I don't
16 understand why the uncertainty about who was going to
17 be included in the action had any bearing, should
18 cause any delay in serving that original complaint
19 within the 120-day period.

20 MR. DIPIETRO: Your Honor, we already have
21 three index numbers and I just thought, you know, to
22 kind of simplify things, not just for me but for the
23 Court.

24 THE COURT: I wouldn't play with fire that
25 way.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: I wasn't trying to, your
2 Honor. I was trying not to create more confusion by
3 having all these extra index numbers.

4 THE COURT: And it was April 4th that
5 Dr. Hadden was served?

6 MR. DALTON: No, your Honor, it was well
7 after that.

8 THE COURT: I'm sorry, you said about two
9 weeks later. Right?

10 MR. DALTON: Yes, between two and three weeks
11 later, Judge.

12 THE COURT: After April 3rd?

13 MR. DALTON: Yes.

14 THE COURT: And that was the one that was
15 accepted for filing?

16 MR. DIPIETRO: Yes.

17 THE COURT: You knew as of March 26, 2019,
18 that Dr. Hadden -- that Dr. Hadden's attorney, I
19 guess it was, refused to accept service for him.
20 Right?

21 MR. DIPIETRO: That's when they refused to
22 accept service on March 26th, correct.

23 THE COURT: Right. But you didn't inquire
24 until March 25th?

25 MR. DIPIETRO: Correct. I think March 24th,

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 but, yes.

2 THE COURT: Oh, okay, you're right. Then I
3 don't understand what is this three-year period from
4 Dr. Hadden's sentencing? I believe under CPLR
5 Section 215 -- first of all, the biggest hurdle is
6 that the criminal action has to pertain to the claims
7 in the civil action and I believe plaintiffs concede
8 that the charges in the criminal action pertain to
9 other women.

10 MR. DIPIETRO: No, your Honor, we don't.

11 THE COURT: You don't?

12 MR. DIPIETRO: No, not at all.

13 MR. DALTON: That's certainly our position,
14 that the claims in Complaint B, C, or D apply to
15 people who are not -- who were not parties in the
16 criminal action.

17 THE COURT: How about Complaint A?

18 MR. DALTON: Complaint A, the original
19 complaint, the one that we worked with the four Jane
20 Does, 3 through 6.

21 MS. HOLZKA: No, no, no, no, no. Complaint A
22 would be --

23 THE COURT: Do any of the complaints --

24 MS. HOLZKA: No, not this --

25 THE COURT: -- include any of the women who

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 are -- with whose abuse Dr. Hadden was charged in the
2 criminal actions?

3 MR. DALTON: No.

4 MS. HOLZKA: The only one I would say is that
5 there's Jane -- I believe it's Jane Doe Number 6
6 is -- she is one -- she is one of -- she's one
7 claimant who Dr. Hadden pleaded guilty to a crime.

8 THE COURT: Okay. And was sentenced on --

9 MS. HOLZKA: Back --

10 THE COURT: In March 2016.

11 MS. HOLZKA: Correct. But she's already part
12 of other prior summonses.

13 THE COURT: She brought an action earlier?

14 MR. DALTON: Correct.

15 MS. HOLZKA: Correct, your Honor.

16 THE COURT: I just want to get the exact text
17 of CPLR 315.

18 MR. DIPIETRO: I think it's 215, your Honor.

19 THE COURT: I'm sorry, 215, you're right. "A
20 criminal action against the same defendant has been
21 commenced with respect to the event or occurrence
22 from which a claim governed by the section arises."

23 A claim, meaning, a claim that otherwise must
24 be commenced within one year. So it's got to be the
25 same women. Clearly each occurrence of sexual abuse

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 was a different occurrence.

2 MR. OLCH: Your Honor, you might also want to
3 look, your Honor, I think it's 213-B, which deals
4 with victims of sex offenses who are not necessarily
5 victims --

6 THE COURT: Well, yes. No, I agree. That's
7 why I said -- I don't know why you keep talking about
8 three years. It's either one year from the
9 termination of the criminal action for most offenses
10 or for a rape and sexual abuse and other related
11 offenses it's five years.

12 MR. OLCH: Correct. Yes, I agree, your
13 Honor.

14 THE COURT: Okay. So I don't know why
15 plaintiffs keep talking about three years.

16 MR. DIPIETRO: Because --

17 THE WITNESS: The bigger problem is that the
18 criminal charges did not relate to these plaintiffs.

19 MR. OLCH: Your Honor, I think under 213 it's
20 not necessary that they do that, that they be
21 related; and, in fact, it specifically says in the
22 statute, as I recall, that the -- there never even
23 had to be a criminal prosecution.

24 THE COURT: CPLR 213 or 215?

25 MR. OLCH: No, 213. I think 213-B

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 specifically says --

2 THE COURT: I'm now looking at 215-8(2).

3 MR. OLCHE: Right, but your Honor also just
4 referred to the five years which was --

5 THE COURT: Five years is CPLR 215-8(2).

6 MR. OLCHE: All right.

7 THE COURT: Now, are we talking about the
8 same section?

9 MR. OLCHE: No, I was referring to Section
10 213-B.

11 THE COURT: Okay.

12 MR. OLCHE: Which deals with situations of
13 victims of sex offenses bringing civil actions in
14 situations in which the defendant in the civil action
15 need not even have been criminally prosecuted.

16 THE COURT: In which defendant what --

17 MR. OLCHE: In which the defendant in the
18 civil action need not have actually been a defendant
19 in a criminal proceeding. I mean, there's two
20 different periods of time, and I thought that's what
21 your Honor was referring to --

22 THE COURT: No.

23 MR. OLCHE: -- as the five years.

24 MS. HOLZKA: Your Honor, if I may respond to
25 the three years that you -- the three years would

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 have nothing to do with those particular statutes
2 because it has to do with the negligence claims as to
3 the hospital and to the university. There is no
4 tolling based upon negligence on either of those
5 statutes that we're talking, 213 --

6 THE COURT: 213 what?

7 MR. OLCH: I think it's 213-B. There is a
8 B --

9 THE COURT: There is no 213-B.

10 MR. OLCH: As I recall it's 213, letter B.

11 THE COURT: 213 hyphen B?

12 MR. OLCH: Yes. Correct.

13 THE COURT: Hyphen B?

14 MR. OLCH: Hyphen B, yes. I'm sorry.

15 THE COURT: I don't even think there's such a
16 statute. There is, okay. All right. You're right.
17 But, again, it's a crime which is the subject of such
18 action.

19 MR. DIPIETRO: Right. And your Honor, it's
20 plaintiffs' position that all of these women, 17
21 women came forward; they were all part of that
22 action. They all helped procure the conviction. We
23 have a letter from the district attorney's office to
24 one of the women that has been exchanged to Columbia
25 University and Robert Hadden that says that Hadden

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 knows he assaulted all of them and they were all part
2 of procuring the conviction.

3 Further, one -- excuse me. Further, one of
4 the women was within the criminal statute of
5 limitations. The District Attorney could have --

6 THE COURT: I think that many of them may
7 still be within the five years under CPLR 215-8(b) --
8 I'm sorry, 8 -- I'm sorry, it's 215(8) (b), not
9 subsection (2). Excuse me.

10 MR. DALTON: Your Honor, of course it's our
11 position, and contrary to counsel's statement --

12 MR. DIPIETRO: I didn't finish.

13 MR. DALTON: -- that none of these women were
14 named as individuals. They were not complaining
15 witnesses; they were not people who were involved in
16 the criminal action.

17 I know that there may be some letters saying,
18 well, Hadden knows that he did something. Well,
19 that's just nonsense. There's absolutely no way that
20 a statement made or a self-congratulatory letter from
21 an assistant district attorney is going to convert
22 people who were not parties to that criminal action
23 in June; parties who actually were complaining
24 witnesses in a criminal proceeding.

25 MR. DIPIETRO: I don't think the assistant

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 district attorney is congratulating herself. What
2 she was doing was expressing the reality that all
3 these women --

4 THE COURT: I'm going to go by the text of
5 the statute, I'm sorry. But I think that you are
6 still within -- I mean, I shouldn't be giving any
7 advice, but it appears to me that you are still
8 within the statute of limitations, even now, right,
9 or -- it was -- March 2016 was the sentencing.
10 Right?

11 MR. DIPIETRO: Correct.

12 THE COURT: Under CPLR 215-8(b) to the extent
13 it would apply to anyone, but it doesn't sound to me
14 like it does.

15 MR. DIPIETRO: It does apply to all of them
16 because as -- and even part of the plea agreement
17 that was entered into, the defendant and the district
18 attorney agreed to not prosecute him for any women
19 that they knew of at the time that the plea was
20 entered. These women were used as part of the
21 negotiation. They were very much a part of this
22 criminal action, and I think to say that they weren't
23 part of this criminal action kind of demeans them and
24 the courage that it took them to come forward.

25 THE COURT: I don't have any of this in the

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 record here.

2 MS. HOLZKA: No, absolutely not and --

3 MR. DIPIETRO: I'm telling you what the
4 reality is.

5 MS. HOLZKA: And Anthony -- Mr. DiPietro, why
6 don't you tell the judge when half of these women
7 came forward, and that they're not *Molineux* witnesses
8 or part of the D.A.'s investigation. You've been
9 touting in the media and to this Court how many more
10 plaintiffs you've gained since this time. So, who's
11 who?

12 And regardless, Judge, this is not before --
13 none of this actual evidence is before your Honor
14 and, in addition, it's completely irrelevant to the
15 university and to the hospital, as we were not a
16 criminal defendant.

17 MR. OLCH: Your Honor, I would note there's a
18 bit of talking about fairness and what's before the
19 Court. What's before the Court is the question of
20 enlarging the time to serve this. As I recall, their
21 papers did not raise; questions regarding the statute
22 of limitations.

23 THE COURT: But there were several criteria
24 that you articulate and that I'm very familiar with
25 and that I take into consideration in deciding

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 whether to extend the time. One is that you did
2 nothing to try to serve these defendants before the
3 deadline.

4 MR. OLCHE: I appreciate that.

5 THE COURT: Virtually nothing.

6 MR. OLCHE: Right. Well, I don't agree.

7 THE COURT: And the second is that there has
8 to be some colorable merit to the action.

9 MR. OLCHE: I'm only pointing out that --

10 THE COURT: You're past the statute of
11 limitations; that's it.

12 MR. OLCHE: I understand that, your Honor, but
13 I think what's a little bit unfair and which is
14 blindsiding the plaintiffs unfairly, the plaintiffs
15 in this case unfairly, is that the statute of
16 limitations was not raised as an objection. I
17 understand your Honor --

18 MS. HOLZKA: That's not true.

19 THE COURT: It's raised in opposition to this
20 motion.

21 MR. OLCHE: Excuse me?

22 THE COURT: It's raised in opposition to this
23 motion.

24 MS. HOLZKA: Paragraph 52, your Honor, we
25 claim that the one-year, three-year, and six-year

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 statute of limitations had clearly expired as to
2 our -- my clients.

3 MR. DIPIETRO: And, your Honor, I don't think
4 it's fair to say that we've done nothing, when
5 this -- when this -- when the papers --

6 THE COURT: I agree that defendants knew
7 about the claims from, you know, your pre-suit
8 discussions.

9 MR. DIPIETRO: You know --

10 THE COURT: But that's not attempts to serve
11 them.

12 MR. DIPIETRO: When this new action was
13 filed, the media monitors the court system. It was
14 picked up by CBS and the phone started ringing and
15 people came in. And I had to review those cases.

16 Again, I tried to consolidate it for
17 everybody's convenience and include them all in one
18 case instead of having these separate actions out
19 there. And then in February, completely
20 unpredictable, the State of New York changed the law
21 that directly affects one of the women.

22 THE COURT: How did that have any effect on
23 your just simply serving that December 2018 complaint
24 and then decide if you want to join other plaintiffs
25 or you want to delete anyone, to discontinue their

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 claims, fine, or you want to add other substantive
2 claims to the action? I don't see how any of that
3 affected your ability to serve the defendants.

4 MR. DIPIETRO: The law provides 120 days and
5 women were coming forward.

6 THE COURT: Right. Right. But then you
7 don't wait until the 119th day to do something about
8 it.

9 MR. DIPIETRO: We didn't, your Honor, we
10 really didn't. And, again, the law changed in
11 February --

12 THE COURT: And even now you haven't served
13 them.

14 MR. DIPIETRO: Well --

15 THE COURT: Except for Dr. Hadden.

16 MR. DIPIETRO: It's my understanding the case
17 law said that when you file the motion and you attach
18 the exhibit, it can be deemed service.

19 THE COURT: That's not service pursuant to
20 CPLR Article 3, okay?

21 MS. HOLZKA: In addition, your Honor, there
22 was one -- there's one change as to one plaintiff
23 that we're talking about that had to do with being a
24 minor, it had nothing to do with all the other
25 plaintiffs. Our clients weren't served, period.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: And there's also case law that
2 says I can't serve unless I seek leave of court to
3 extend the time, your Honor. So, I mean --

4 THE COURT: There was nothing, nothing that
5 stopped you from serving that December 2018 complaint
6 that I can see.

7 MR. DIPIETRO: Well, the fact that the clerk
8 didn't approve it until after the 120 days and then I
9 immediately made the --

10 THE COURT: It didn't approve the December --
11 you filed the December 2018 complaint?

12 MR. DIPIETRO: No, the amended complaint I'm
13 referring to.

14 THE COURT: Forget about the amended
15 complaint. Worry about that later.

16 MR. DIPIETRO: I immediately filed the motion
17 to extend the time immediately.

18 THE COURT: I'm not relying on any of that.
19 I don't -- I can understand, you know, the problems
20 that you may have had with filing the amended
21 complaint. I would -- I would give you -- I would
22 excuse any of those problems; it's the problem
23 between December 4th and the end of March.

24 MR. DIPIETRO: Your Honor, I gained
25 nothing -- there's no intentional delay. I gained

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 nothing by waiting.

2 THE COURT: No, it's true --

3 MR. DIPIETRO: I waited for a reason.

4 THE COURT: It's true, I don't think
5 defendants are prejudiced, but the statute on
6 limitations does not depend on prejudice.

7 MR. DIPIETRO: But the grant of the extension
8 of the 120 days does, and there is no prejudice. And
9 to the extent that they had preregistered with the
10 electronic filing system when the amended complaint
11 was uploaded, actually, pursuant to the court rules
12 they were served because they made an appearance. So
13 they were served when the clerk accepted the amended
14 complaint.

15 MS. HOLZKA: Your Honor, it is not true.
16 That is not the rules, number one. Number two, we
17 made no appearance, quote/unquote, pursuant to the
18 CPLR. In addition to that, we had registered the day
19 before on April -- excuse me, on April 4th, the day
20 after, when we made -- when we removed --

21 THE COURT: I don't care about who did
22 what --

23 MS. HOLZKA: But we removed the case.

24 THE COURT: As I said --

25 MS. HOLZKA: We removed the case to federal

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 court.

2 THE COURT: -- that's not my issue here. My
3 issue is the complete lack of diligence in attempting
4 to serve and the potential merit of the action.

5 Now, the intentional torts that are claimed,
6 it's just assault and battery or --

7 MR. DIPIETRO: No, your Honor, there's
8 assault. There's --

9 THE COURT: I know there's also defamation
10 and negligence, but you just -- there is a reference
11 to intentional torts, so I'm assuming the intentional
12 torts are assault and battery?

13 MR. DIPIETRO: Assault, battery, rape in the
14 first degree -- excuse me.

15 THE COURT: Not in a civil action.

16 MR. DIPIETRO: Just plain generally assault
17 and battery.

18 THE COURT: Right. Isn't that what your
19 claims are?

20 MR. DIPIETRO: Yes.

21 THE COURT: Okay. I just want to be clear
22 about what the intentional torts were.

23 MR. DIPIETRO: And also negligence as well.

24 THE COURT: Yes. There is this whole issue
25 about commencing the action using pseudonyms for all

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 but one of the plaintiffs, but I don't -- I don't
2 believe I really need to get into that issue. I
3 mean, the original complaint was not rejected.
4 Right?

5 MR. DIPIETRO: No. And also, your Honor, I
6 think for completeness, it would be -- I think it's
7 important that the Court understands the history that
8 led up to the filing of the complaint. There were
9 discussions that began last year.

10 THE COURT: No, I understand that. I'm
11 taking all that into account.

12 MR. DIPIETRO: The defendants --

13 THE COURT: I agree, there's no prejudice
14 here.

15 MR. DIPIETRO: Right. Well, this one part is
16 important. The defendants asked for us to hold off
17 on filing the new complaint starting last summer and
18 to mediate the cases.

19 THE COURT: That's your estoppel argument.

20 MR. DIPIETRO: But then -- but then, your
21 Honor --

22 THE COURT: Is that your estoppel argument?

23 MR. DIPIETRO: Well, that's estoppel, yes,
24 but it's also important for this, and here's why.
25 Then they said --

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 THE COURT: It's important for what?

2 MR. DIPIETRO: It's important for this
3 discussion, and here's why. They said that after we
4 mediated the cases and they said they would try to
5 resolve them for everyone, then they said, Well,
6 we're only looking to resolve for women whose case
7 have been filed. So I filed the case in December,
8 but then I had more people coming forward. And so
9 I'm, like, Well I must include these new women in
10 this case. So it's important --

11 THE COURT: That has nothing to do with the
12 120 days.

13 MS. HOLZKA: Judge, it has nothing to do with
14 the 120 days. It's untrue, many of the things that
15 Mr. DiPietro just said. In addition to that, not one
16 time did he ask for, in this purported period of time
17 where anybody said that they would resolve all of his
18 cases, or whatever that's supposed to mean. But at
19 no time, no time, whether when he first signed these
20 people up, purportedly signed these people up, or
21 not, asked for any type of tolling agreement. That's
22 what we usually get from plaintiffs' counsel who are
23 concerned about statute of limitations and wish to
24 discuss resolution instead. Plaintiffs' attorneys
25 request tolling agreements. That was never -- if

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 that was an issue in this case, if that was actually
2 going on in this case, then, where are they?

3 In addition to that, there were four
4 plaintiffs where they said come to the table, let's
5 see what else you have. And I would like any part of
6 the discussion about resolution in this case to be
7 either off the record or under seal, your Honor,
8 please. But in addition to that, afterwards, in -- I
9 believe it was in November --

10 THE COURT: You don't have to discuss it.

11 MS. HOLZKA: Okay.

12 THE COURT: Also, you can all remain seated.
13 As long as you keep your voices up, you don't need to
14 stand. It's up to you. I just want to be clear, I'm
15 not sure it's that important, but Jane Doe Number 16
16 is the one who is a minor?

17 MR. DIPIETRO: Yes, your Honor.

18 THE COURT: So she can commence an action
19 under the new law starting in August. Correct?

20 MR. DIPIETRO: Yes, August 14th, I believe.

21 THE COURT: And she -- she is omitted from
22 the amended complaints that were rejected but then
23 she was added back in, in the ultimate version D?

24 MR. DIPIETRO: That's what the clerk
25 required, yes.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 THE COURT: Okay.

2 MR. DIPIETRO: Your Honor hasn't addressed
3 the Gender Violence Act, which is another statute,
4 which is a seven-year statute, which potentially
5 could run for some of the women that commenced back
6 in 2000 -- you know, it would have started back in
7 2012.

8 THE COURT: I'm sorry, is that one of the new
9 laws?

10 MR. DIPIETRO: The Gender Violence Act?

11 THE COURT: Yes.

12 MR. DIPIETRO: Actually, that's not new.
13 It's been on the books for a while, but it was part
14 of Amended Complaint D and some of the women would be
15 within the statute as of December 2018 but not
16 potentially if I had to refile this today.

17 MS. HOLZKA: I don't believe that's part of
18 Amended Complaint D, your Honor, that cause of
19 action. He filed a new cause of action with a 2019
20 index number with a sole claim based upon that
21 statute. That doesn't have to do with this case.

22 MR. DIPIETRO: I will pull it up.

23 THE COURT: Well, I believe that you both
24 attach all the versions of the complaint. Right?

25 MS. HOLZKA: I believe so, your Honor.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: I think it's public action 1.

2 MS. HOLZKA: And like I said, I don't have it
3 in front of me but there's a lot of different
4 complaints.

5 THE COURT: Let me just see. Do you recall,
6 Ms. Holzka, which of your exhibits is the ultimate
7 Amended Complaint D.? That's just because I now have
8 your opposition right in front of me.

9 Is it your Exhibit F?

10 MS. HOLZKA: I'm sorry, your Honor, I'm
11 looking for it. It is F, your Honor.

12 MR. DIPIETRO: So, the first cause of action
13 in Amended Complaint D starts --

14 THE COURT: Amended Complaint D?

15 MR. DIPIETRO: Yeah, starts at paragraph 523.
16 First cause of action committing and enabling gender
17 violence.

18 THE COURT: I'm sorry, which paragraph again?

19 MR. DIPIETRO: Right before -- 523.

20 THE COURT: It's gender discrimination.

21 MR. DIPIETRO: I think it's called gender
22 violence; it's part of the New York City Code.

23 THE COURT: Well, I'm looking at paragraph
24 523, it's based on 20 USC Section 1681.

25 MR. DIPIETRO: No, that would not be the

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 right -- I don't know if you have D.

2 THE COURT: I must be looking at the wrong
3 amended complaint then. Are you sure it's Exhibit F?

4 MR. DIPIETRO: It's not -- well, that's in
5 Ms. Holzka's --

6 THE COURT: Exhibit F --

7 MR. DIPIETRO: No, that's the problem, it's
8 my exhibit.

9 THE COURT: All right. So let me look at
10 plaintiffs'.

11 MR. DIPIETRO: That's not what was filed in
12 the court. What was filed is Exhibit A --

13 THE COURT: I'm looking for what you both
14 refer to as Complaint D, as in dog.

15 MR. DIPIETRO: Right. Well -- so I don't
16 think counsel attached Complaint D --

17 MS. HOLZKA: Yes, we did.

18 MR. DIPIETRO: We have attached it as
19 Exhibit A.

20 THE COURT: Okay. Paragraph 523 --

21 MR. DIPIETRO: Yes, your Honor.

22 THE COURT: -- it doesn't cite any statute.

23 MR. DIPIETRO: It's the gender violence
24 statute.

25 THE COURT: I don't even see that.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: First cause of action
2 committing and enabling gender violence.

3 THE COURT: Right. But I don't see any --
4 okay. It just says, constitutes a criminal offense
5 under New York state laws. Which statute are you
6 relying on?

7 MR. DIPIETRO: I believe there's a series of
8 them that start at NYC Amend Code Section 8-902.

9 THE COURT: Okay. Is it set forth --

10 MS. HOLZKA: Your Honor, that's not the
11 complaint.

12 THE COURT: Is it set forth earlier on in
13 your complaint?

14 MR. DIPIETRO: Well, no, but I don't think
15 it's a requirement to cite the specific statute.

16 THE COURT: No, it's not, but I need to know
17 that it exists.

18 MR. DIPIETRO: Yes. Well --

19 THE COURT: Otherwise it's just an assault
20 and battery claim.

21 MR. DIPIETRO: No. So it's New York City
22 Code 8-902 et. seq.

23 THE COURT: Let me just get back to the
24 plaintiffs in the action. Complaint D, in the
25 operative amended complaint that was accepted for

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 filing, do we have the three new plaintiffs in that
2 action?

3 MR. DIPIETRO: Yes.

4 THE COURT: So all of the amended complaints
5 include three new plaintiffs starting with the two
6 that were rejected for filing and then the last one?

7 MR. DIPIETRO: Yes. Sixteen was out of one
8 of them but then --

9 THE COURT: Right. She was out of the first
10 one, Complaint B. So the statute of limitations
11 would be tolled for them at the earliest the time
12 when those amended complaints were filed. Right?

13 MR. DIPIETRO: I think it relates back to
14 December, the initial filing date.

15 THE COURT: I'm not sure if that -- I don't
16 think for new plaintiffs. I think only if the
17 original plaintiff had added causes of action.

18 MS. HOLZKA: I think you're right, your
19 Honor. To the extent that there are new plaintiffs,
20 you don't get to tag on a plaintiff to a prior
21 previously filed action who is new, and the statute
22 of limitations was already tolled, or expired.

23 THE COURT: When the amended complaint was
24 first filed, even though it was rejected, I think
25 that probably would be the date and finally whether

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 the amended complaint was actually accepted for
2 filing. Those few dates probably do not make any
3 difference.

4 MS. HOLZKA: You're right, your Honor. I
5 would just state for the record, since this is on the
6 record, that, you know, and we've alluded to this in
7 the papers or at least put it within it, but, you
8 know, none of these tolls that we're talking about we
9 would concede or even that they would apply to the
10 university or to the hospital, particularly --

11 THE COURT: Right.

12 MS. HOLZKA: Okay.

13 THE COURT: And they only apply to
14 Dr. Hadden, if I were to construe CPLR 213-B or
15 215-8(b) to include their claims, to incorporate
16 their claims, apply to their claims.

17 MR. DALTON: Of course, your Honor. Just for
18 the record --

19 MR. DIPIETRO: Your Honor --

20 MR. DALTON: Can I finish?

21 MR. DIPIETRO: Under the case of *Alford* in
22 the First Department their claims do relate to the
23 employer. This was res judicata in this case. This
24 was already decided by Judge Mendez that the claims,
25 the tolling under CPLR 215 applies to both the

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 perpetrator and the employer.

2 MS. HOLZKA: Your Honor, first of all, that
3 has to do with certain causes of action under those
4 particular statutes, number one. Number two, there
5 was issues about whether there was an issue of fact
6 as to one plaintiff in that case. In addition,
7 there's been a clarification of that law, that was
8 signed yesterday, that should clear up this issue for
9 the Court entirely; but in addition to that, it only
10 applies to certain causes of action.

11 THE COURT: You're talking about Justice
12 Mendez's decision? Is that what --

13 MS. HOLZKA: No. In terms of this one
14 decision out there by the First Department that it
15 doesn't really talk to -- it doesn't really speak to
16 the facts as to why a particular employee could be
17 responsible under an employee for the purposes of
18 that statute.

19 And the bottom line is, is that it has
20 nothing to do with the extension of negligence claims
21 or anything like that under those statutes.

22 THE COURT: And also I have to determine
23 whether that statute even applies to begin with.

24 MR. DALTON: Your Honor, just --

25 THE COURT: 213-B or 215.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DALTON: Your Honor, just to complete my
2 thought from before, I just wanted to be clear on the
3 record that Dr. Hadden --

4 THE COURT: You have to keep your voice up.

5 MR. DALTON: Sure. I just want it to be
6 clear for the record that Dr. Hadden does not in any
7 way concede that any of these tolls would apply to
8 him. I know your Honor will perhaps construe those
9 statutes, but Dr. Hadden certainly objects to --

10 THE COURT: The tolls under CPLR --

11 MR. DALTON: Yes.

12 THE COURT: -- 213-B, or 215-8(b) or
13 something else?

14 MR. DALTON: I -- the ones you just
15 mentioned, your Honor.

16 THE COURT: Okay. I don't think those are
17 really tolling statutes, they're just statute of
18 limitation. Those time periods, those limitation
19 periods, that's what you're talking about?

20 MR. DALTON: Yes, Judge.

21 THE COURT: So the administrative code
22 section that you're relying on, the plaintiffs are
23 relying on is Section 8-902?

24 MR. DIPIETRO: I believe that's correct, your
25 Honor. At least two of the women, your Honor, would

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 be prejudiced if the December filing didn't exist. I
2 mean, they are within the seven years as a result of
3 the December filing.

4 THE COURT: The seven-year statute of
5 limitations under that statute?

6 MR. DIPIETRO: Yes.

7 THE COURT: When did the -- when did
8 Dr. Hadden's actions about which you complained end?
9 When in 2012?

10 MR. DIPIETRO: Well, it's different for
11 everyone. He stopped working there -- I still don't
12 have exact dates from defense counsel, but it seems
13 to be between August and September of 2012. But some
14 people didn't see him in August 2012, some saw him --
15 the last visit was March 2012, or May 2012. And so
16 those women need the filing from December 2018 to be
17 within the seven years.

18 THE COURT: Those three women, those three
19 additional women who were added, it pertains to them?

20 MR. DIPIETRO: No, they were from the
21 original Complaint A.

22 THE COURT: Oh. Well, they -- they are
23 allowed the December -- they have the December filing
24 date, so it doesn't matter.

25 MR. DIPIETRO: Okay.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 THE COURT: Okay. Are defendants still
2 relying on failure to seek permission to proceed with
3 a pseudonym?

4 MS. HOLZKA: Your Honor, we didn't make a
5 cross-motion to dismiss on that point because quite
6 frankly I'm not sure where this is. When the action
7 was filed in December it seemingly was filed with an
8 Order to Show Cause to allow the plaintiff to proceed
9 with that.

10 THE COURT: I think plaintiffs will concede
11 there is no order permitting them to proceed --

12 MS. HOLZKA: Right. I mean, as of right now
13 it's not technically correct, so I couldn't
14 concede -- I couldn't concede anything.

15 THE COURT: I don't see that that affects the
16 filing of the complaint.

17 MS. HOLZKA: Whether it does or not, I --

18 THE COURT: The service of the complaint.

19 MS. HOLZKA: No.

20 THE COURT: You agree it does not?

21 MS. HOLZKA: Well, I mean, to the extent that
22 should they have had -- do they have standing, I'm
23 not sure. I don't know -- you know, technically they
24 have to have permission to proceed, so technically --

25 THE COURT: In other words, the question is

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 whether proceeding via a pseudonym without permission
2 would undermine the merits of the action.

3 MS. HOLZKA: I wouldn't go that far because
4 certainly we looked at this case law before and it
5 doesn't under -- it doesn't not undermine the merits
6 or speak to the causes of action, but I would not
7 concede more than that. I don't think it would
8 affect service, your Honor, if that's what you're
9 asking.

10 MR. DIPIETRO: And to be clear, your Honor,
11 the plaintiffs were instructed to not file that by
12 the county clerk who issued the index number.
13 They -- the county clerk who issues the index number
14 said you do not need an order --

15 THE COURT: The county clerk does not -- I
16 respect him very much, but he does not make the law.
17 Okay? I don't really care what the county clerk
18 says, I just care what the law provides.

19 MR. DIPIETRO: But as an attorney I can't do
20 anything unless the -- unless I follow the county
21 clerk's rules. I can't file or not file unless I do
22 what they say.

23 THE COURT: That may be an excuse for, you
24 know, being late about something and so forth, but
25 that's all.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 What has happened in federal court?

2 MR. DIPIETRO: Various letters were sent back
3 and forth to Judge Carter. We filed a motion to
4 remand, defendants opposed. We filed a reply and we
5 are, as of this morning, still waiting to hear from
6 Judge Carter as to whether or not he's going to ask
7 us in for oral argument or simply issue some type of
8 letter or mandate.

9 MS. HOLZKA: We're waiting for a decision on
10 the motion, your Honor.

11 THE COURT: You'll let me know as soon as you
12 hear anything on that, because it's a different
13 complaint. But there is the law that -- if it is
14 treated as the complaint in this action, I'm not sure
15 that I can do anything with subsequent -- a
16 subsequent complaint that deleted the federal claims.

17 Do we have an actual date that Dr. Hadden was
18 served?

19 MR. DALTON: Your Honor, it was December 4.
20 I don't recall if it was on the 14th or the 30th of
21 April. I just don't know.

22 THE COURT: Fourteenth or the what?

23 MR. DIPIETRO: Thirtieth of April. It was
24 sometime in that period.

25 THE COURT: So, who is it that you're

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 referring to, Mr. DiPietro, when you say that
2 defendants were served on day 122? You just mean
3 that that's when they were served with this motion
4 that's attached to the complaint; is that right?

5 MR. DIPIETRO: With -- yes, the motion to
6 extend the time, yes, your Honor.

7 Well, again, not just that but also the fact
8 that by virtue of being registered for the e-filing
9 system service is now done electronically.

10 Defendants were all registered with the
11 e-filing system.

12 THE COURT: No, not when you commence an
13 action. That may suffice for serving the amended
14 complaint once you've served the original complaint.

15 MR. DIPIETRO: Correct. But you don't serve
16 both. You only serve the amended complaint. When
17 you amend a complaint, you don't serve the original
18 complaint when you amend it as a right.

19 MS. HOLZKA: Your Honor, we did not do a
20 notice of appearance in the case. It's CPLR --

21 THE COURT: Now, in your reply on this
22 motion, you refer to the New York Gender-Motivated
23 Violence Act. You're saying New York City Code, I
24 think you mean New York City Administrative Code
25 Section 8-101. The citation you just gave me was

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 8-902.

2 MR. DIPIETRO: Let me check that.

3 THE COURT: And nowhere in this motion do you
4 appear to rely on CPLR 213-B, you only rely on CPLR
5 215. That's why I went to that statute and not the
6 one that your co-counsel is referring to. And where
7 you say that plaintiff has pleaded various tolling
8 provisions, you do that in your complaint?

9 MR. DIPIETRO: Yes.

10 THE COURT: Where in your complaint?

11 MR. DIPIETRO: 8-101 is a correct citation.
12 I'm not sure that the other one is incorrect. I
13 think they both may be applicable. I think 8-101 is
14 also correct.

15 THE COURT: Where in your complaint do you
16 plead tolling --

17 MR. DIPIETRO: I'm pull that up right now.

18 THE COURT: -- your theories of tolling?

19 MR. DIPIETRO: Sure. So I believe I have
20 done that separately for each individual plaintiff.
21 Let me find that.

22 THE COURT: Give me an example.

23 MR. DIPIETRO: Okay. So paragraph 10.

24 THE COURT: Okay. This is with respect
25 to plaintiff Hoechstetter?

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: Yes. "Based on the words and
2 conduct of each defendant, their agents, servants
3 and/or employees, plaintiff was induced to not file a
4 complaint earlier. Further, plaintiff has been
5 emotionally traumatized by the defendants' conduct
6 and abuse and has lacked the capacity to deal with
7 and confront the important legal issues and rights
8 herein until the present."

9 So there is the estoppel argument, your
10 Honor, as well as the lack of capacity.

11 MS. HOLZKA: Your Honor, if there is lack of
12 capacity, then I would -- then none of these
13 plaintiffs are able to carry the suit.

14 THE COURT: Well, it could be that they
15 regained their capacity, that's conceivable.

16 MS. HOLZKA: Okay.

17 THE COURT: All right. So it may be that the
18 statute of limitations issues need to be flushed out
19 upon a motion to dismiss. If there's enough that's
20 been raised here to demonstrate potential, you know,
21 merit to the action -- in other words, time limits of
22 the action -- then I'll have to -- then I'll rely on
23 the other factors that they're on extending time.

24 As I say, I'm not that concerned about the
25 difference between the end of March and April 4th.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 I'm more concerned about doing nothing from December
2 to the end of March. And then there are the other
3 factors, such as the lack of -- the absence of any
4 prejudice. Is there any prejudice here to
5 defendants?

6 MS. HOLZKA: There is prejudice in the fact,
7 your Honor, that, you know, an action is filed,
8 nothing has been served; that's prejudice in and of
9 itself. The fact is that our clients at this point
10 have a right to know, you know, who's bringing
11 actions, who's claiming these tollings, who's
12 claiming all kinds of different things, and I don't
13 think we're served pursuant to the CPLR. That's the
14 prejudice.

15 THE COURT: Anything else?

16 MR. DIPIETRO: No, your Honor, I don't think
17 there could be any credible claim of prejudice. I
18 offered to serve them and they're -- they rejected
19 that offer.

20 THE COURT: Right. Which they're perfectly
21 entitled to do, of course.

22 MR. DIPIETRO: But they can't then claim
23 prejudice by not being served.

24 MS. HOLZKA: There is a CPLR that governs.
25 In addition to that, your Honor, we were served what

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 we were served with and what we were asked to accept
2 as service was the complaint that had the federal
3 causes of action. We were obviously severely
4 prejudiced. The fact that we got that, we removed it
5 to federal court, and we have a motion pending in
6 federal court.

7 And frankly, your Honor, with all due
8 respect, and I mean that not in a sarcastic way where
9 I know sometimes judges may take it that way, but at
10 this point the case is in federal court. There is a
11 motion pending, and right now I'm really not sure if
12 there's jurisdiction here based upon that.

13 THE COURT: Right. It probably would be wise
14 to wait for a decision there, unless it's not
15 forthcoming.

16 MS. HOLZKA: Yeah, we don't know.

17 THE COURT: All right. Off the record.

18 (Off the record.)

19 THE COURT: Would you agree that when I
20 decide the motion, assuming I don't dismiss the
21 action, I'm required -- I mean, there still hasn't
22 been service on the other -- there's only been
23 service on one defendant. I would hope that perhaps
24 plaintiff would proceed with that in the meantime,
25 and if you do, please let me know, Mr. DiPietro.

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 MR. DIPIETRO: I will, your Honor.

2 THE COURT: Otherwise, if I don't dismiss the
3 action, then I'm going to order service pronto and
4 I'm going to require the defendants to answer by the
5 applicable deadlines and then I would schedule a
6 preliminary conference.

7 MS. HOLZKA: Judge, I would object to the
8 extent that there's still the fact that we've removed
9 the case to federal court.

10 THE COURT: I'm going to wait for that
11 decision as well, unless it's not forthcoming.
12 There's only so long I'm going to wait.

13 Is anyone going to be ordering the transcript
14 from this morning?

15 MR. DIPIETRO: Yes, your Honor.

16 MS. TRACEY: Yes, your Honor.

17 MR. DALTON: Yes, Judge.

18 THE COURT: Do you anticipate there might be
19 a motion to dismiss if I don't dismiss the action?

20 MS. HOLZKA: Your Honor, I'm not in a
21 position to state whether or not there would be
22 a motion -- pre-answer motion to dismiss or not.

23 MR. DIPIETRO: And --

24 THE COURT: Mr. Dalton?

25 MR. DALTON: Your Honor, that would be a

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

1 possibility. I would certainly need to review that.

2 THE COURT: Your time is running, as far as
3 I'm concerned.

4 MR. DALTON: For a pre-answer motion?

5 THE COURT: Excuse me?

6 MR. DALTON: For a pre-answer motion
7 to dismiss you're suggesting, Judge?

8 THE COURT: To answer or to move, yes. I
9 think it's run.

10 MR. DIPIETRO: Your Honor, I have contacted
11 my office. They are -- as soon as they can create 12
12 copies of the pleadings, they will be served. I've
13 already done that.

14 THE COURT: Okay. Well, please let me know
15 when that's actually been effected.

16 (Continued on the next page.)
17
18
19
20
21
22
23
24
25

CHARISSE KITT, CRI, CSR, RMR, FCRR

Proceedings

MR. DIPIETRO: Okay.

THE COURT: All right. I'm going to move on to the status conference in the other actions. We're off the record now on this.

MR. DIPIETRO: Okay.

(Adjourned.)

* * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPTION OF THE ORIGINAL STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING. THE COPYING OF THIS TRANSCRIPT IS PROHIBITED.

*****SIGNATURE IS WRITTEN IN BLUE INK.*****

CHARISSE KITT, CSR, CRI, RMR, FCRR
SENIOR COURT REPORTER

CHARISSE KITT, CRI, CSR, RMR, FCRR